

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3399 of 1998

with

CIVIL APPLICATION No. 4695 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

JIVIBEN WD/O KALAJI BAPUJI

Versus

STATE OF GUJARAT

Appearance:

MR RS SANJANWALA for Petitioner

MR TH SOMPURA, AGP for Respondent Nos. 1 and 2

MR SUDHANSU S PATEL for Respondent No. 4

NOTICE SERVED BY DS for Respondent Nos. 3 and 5

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 30/06/98

ORAL JUDGEMENT

This petition purporting to be a petition under Article 226 of the Constitution read with Article 227 of the Constitution challenges the judgment and order dated 24.3.1998 passed by the State Government in revision application No. SRD/CON.AHMEDABAD/12 of 1995 under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings ACT, 1947 (hereinafter referred to as "the Act").

2. The petitioner sold the land in question admeasuring 1 Acre & 2 Gunthas to respondent No. 3 herein by a registered sale deed dated 16.10.1978. The mutation entry to that effect being entry No. 1491 was made in the revenue record on 20.12.1978 and was certified on 8.10.1979. RTS team was of the view that the land in question was a fragment and, therefore, the proceedings were initiated by the Deputy Collector on 13.6.1993. The Deputy Collector held by order dated 30.6.1993 that the land in question was a fragment and the transaction in question was in violation of Section 7 of the Act and was, therefore, void as per Section 9 of the Act. The matter was carried in revision before the Government which remanded the matter for holding a detailed inquiry on the question whether the land was irrigated, whether the notice under Section 6(2) of the Act was served upon the original owner and thereafter the Deputy Collector was to hear the parties and decide the matter afresh. Pursuant to that order of remand, the Deputy Collector held the inquiry and after hearing the parties held in his order dated 31.5.1996 that the notice under section 6(2) of the Act was served on the owner (i.e. the petitioner herein) and that the land in question was a fragment and the transaction in question was in violation of Section 7 of the Act and, therefore, void under Section 9 of the Act. The consequential order for removing respondent No. 3 from the land in question was also passed.

3. Aggrieved by the above order of the Deputy Collector, respondent No. 3 preferred revision application No. 12 of 1995 before the State Government. After hearing the parties and considering the material on record, the Additional Chief Secretary (Appeals), Revenue Department exercising the powers of the revisional authority allowed the revision application on the

following grounds :-

- (i) The proceedings were initiated after a period of 15 years which was far beyond the reasonable time during which such proceedings could have been initiated.
- (ii) The land in question was irrigated land and, therefore, since it was more than 20 Gunthas in area, it was not a fragment.

It is the aforesaid order of the Government which is under challenge in the present Special Civil Application.

4. At the hearing of this petition, Mr S.H. Sanjanwala, learned Senior Advocate for the petitioner has submitted that the Tribunal has erred in relying on the decision of this Court in the case of Ranchhodhbhai Lallubhai Patel vs. State of Gujarat & Ors., 1984 (2) GLR 1225 and on the decision rendered by this Court on 29.2.1988 in Special Civil Application No. 4583 of 1985 because in the subsequent decision of this Court in the case of Patel Jividas Trikamdas & ors. vs. District Collector, Mehsana & ors., 1996 (2) GLR 688, this Court has held that in view of the decision of the Supreme Court in the case of State of Orissa vs. Brundaban Sharma, 1995 Suppl. (3) SCC 249, the ratio of the judgements of this Court in the case of Ranchhodhbhai and the other case have been watered down. It is submitted that in the aforesaid case of Patel Jividas Trikamdas, this Court had held that even if the proceedings under Section 9 of the Act were initiated after a period of 20 years, if the transaction was found to be void being in violation of the provisions of Section 7 of the Act, the purchaser cannot defend such void transaction on the ground of lapse of a number of years.

The learned counsel for the petitioner also challenged the finding of the Tribunal that the land in question was an irrigated land. It is submitted that even as per the admission made by respondent No. 3 before the authorities, the land came to be irrigated from 1990 onwards and, therefore, the land was admittedly not being irrigated in the year 1978 when the transfer under the challenge took place. It is, therefore, submitted that the status of the land on the date of the order of the Deputy Collector or the judgment of the Government was not relevant.

5. In reply, Mr Sudhanshu Patel, learned counsel for

respondent No. 4 has submitted that the Government has given a finding of fact, on the basis of the material on record, that the land was being irrigated. It is clearly mentioned in the village form No. 7/12 right from the years 1976-77 onwards that the land was being irrigated and the crops of brinjals, castor, cotton etc. were being taken. It is further submitted that even if the land was a fragment, there was nothing on record to show that the notice under Section 6(2) of the Act was served upon the owner at the relevant time and that the subsequent interested testimony of the petitioner to take undue advantage after 15 years cannot be made the sole basis for holding that the notice under Section 6(2) was served upon the petitioner at the relevant time. Mr Patel has placed strong reliance on the decision dated 14.10.1997 of this Court in Special Civil Application No. 6891 of 1997 wherein this Court had an occasion to observe that equity does not lie in favour of the petitioners who were themselves sellers of the land in question and who were now trying to project the illegality of the transaction.

6. It appears to the Court that the decision of this Court in the case of Patel Jividas (Supra) *prima facie* supports the petitioner's case. However, in an unreported decision on 22.8.1996 in Civil Appeal No. 5023 of 1985 (Mohemad Kavi Mohamad Amin vs. Fatimabai Ibrahim), the Apex Court has held that where no time limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time. In the aforesaid decision dated 22.8.1996, the Apex Court has also approved the ratio of the judgment of this Court speaking through Hon'ble Mr Justice S.B. Majmudar (as His Lordship then was) in Special Civil Application No. 2770 of 1979 (State of Gujarat vs. Jethmal Shaowandas Shah) decided on 1.3.1990 that the power under Section 84 C of the Bombay Tenancy and Agricultural Land Act (hereinafter referred to as "the Tenancy Act"), should be exercised within a reasonable time.

7. Mr Sanjanwala, however, vehemently argued that in the later line of cases, the Court was concerned with the transactions under the Tenancy Act and not under the provisions of Fragmentation Act which has a different object and that the case of Patel Jividas was directly concerned with the Fragmentation Act and is based on the decision of the Apex Court in the case of State of Orissa vs. Brundaban Sharma.

8. Having given anxious and thoughtful consideration to the submissions of the learned counsel, this Court is of the view that there is no conflict between the two lines of cases. Although, *prima facie*, it may appear that the view taken by this Court in the case of Ranchhodhbhai Lallubhai Patel vs. State of Gujarat & Ors., 1984 (2) GLR 1225 decided under the Fragmentation Act has been watered down by the decision of the Apex Court in the case of State of Orissa vs. Brundaban Sharma, 1995 Suppl. (3) SCC 249 which was a case under the Orissa Estate Abolition Act, it cannot, however, be overlooked that, while holding that the order in question could be set aside even after a lapse of 27 years, the Apex Court made the following observations :-

"The obvious intendment in conferring *suo motu* power was to prevent suppression of the agricultural land, liable to be included, or held by the declarant and he cannot plead in his defence his own fraud or suppression and seek shelter thereunder. When the original order was vitiated by illegality or impropriety committed by officer or authority or was passed due to suppression of the material facts or fraud, it was open to the tribunal to reopen the same. The limitation would start running from the date of the discovery of the fraud or suppression of material or relevant fact or omission thereof."

(emphasis supplied)

In para 16 of the judgment, the Apex Court further made the following pertinent observations :-

"It is, therefore, settled law that when the revisional power was conferred to effectuate a purpose, it is to be exercised in a reasonable manner which inheres the concept of its exercise within a reasonable time. Absence of limitation is an assurance to exercise the power with caution or circumspection to effectuate the purpose of the Act, or to prevent miscarriage of justice or violation of the provisions of the Act or misuse or abuse of the power by the lower authorities or fraud or suppression. Length of time depends on the factual scenario in a given case. Take a case that patta was obtained fraudulently in collusion with the officers and it comes to the notice of the authorities after a long lapse of time. Does it lie in the mouth of the party to the fraud to plead limitation to get

away with the order ? Does lapse of time an excuse to refrain from exercising the revision power to unravel fraud and to set it right ? The answers would be no."

(emphasis supplied)

9. The aforesaid observations of the Apex Court, therefore, clearly indicate that if a person is trying to take advantage of his own fraud or suppression of material facts by him, then he can not complain against the authorities taking action after a long period if such fraud or suppression comes to the notice of the authorities after a long lapse of time. Hence, this proposition merely constitutes an exception to the general rule propounded by the Apex Court in the catena of decisions including State of Gujarat vs. Patel Raghavnath & Ors., in 1970(1) SCR 333 and Ram Chand & Ors. vs. Union of India & Ors., in (1994) 1 SCC 44 and Mohemad Kavi Mohamad Amin vs. Fatimabai Ibrahim in Civil Appeal No. 5023 of 1985 decided on 22.8.1996 that where no time is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time and such power has to be exercised within a reasonable time. What is reasonable time would, of course, depend on the facts and circumstances of each case.

10. In view of the above, there is no reason why the same general principle with the same exception as aforesaid should not apply to the exercise of powers under the provisions of the Fragmentation Act. Hence, the ratio of the judgment of this Court in the case of Ranchhodbhai Lallubhai Patel vs. State of Gujarat & Ors., 1984 (2) GLR 1225 should be treated to have been only modified to the effect that it is subject to the exception that plea against exercise of power beyond reasonable time cannot be availed of by a person who is guilty of fraud or suppression of material facts, when such fraud or suppression comes to the notice of the authorities after a long lapse of time.

10. Now applying the aforesaid principles to the instant case, it is not the case of the petitioner-seller that respondent No. 3-purchaser had committed any fraud or suppression of any material fact. On the contrary, the petitioner-seller was bound to know the facts better than the purchaser. So also there is no suppression of fact from the authorities because the entry itself had stated that the question whether the land was a fragment and whether there was any violation of the Act was

required to be examined. Hence, it cannot be said that it was on account of any act or omission on the part of respondent No. 3-purchaser which was responsible for the delay in commencement of the suo motu proceedings in 1993 for invalidating the transaction which had taken place as far back as in 1978. The finding of the Tribunal that the suo motu proceedings in the instant case were initiated after unreasonable delay does not, therefore, call for any interference by this Court under Article 226 or 227 of the Constitution.

11. Mr Sanjanwala further tenaciously submitted that the provisions like Section 84C of the Tenancy Act and similar other provisions dealt with by the Apex Court did not provide that violation of particular statutory provisions would render the transaction void. It is submitted that there is distinction between the expressions "void" and "invalid" and, therefore, the Court must apply the provisions of section 9 of the Fragmentation Act with full force without any other consideration whatsoever.

12. Apropos the aforesaid submission of Mr Sanjanwala, it would be useful to refer to the observations made by the Apex Court in the case of State of Kerala vs. M.K. Kunhikannan Nambiar, (1996) 1 SCC 435, where the Supreme Court had an occasion to consider the expression "void". Of course, it was the case of order of a Tribunal but the following general discussion does throw some light on the meaning of the word "Void":-

"In our opinion, even void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an order will, in fact, be effective inter partes until it is successfully avoided or challenged in a higher forum. Mere use of the word "void" is not determinative of its legal impact. The word "void" has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal. It can be avoided. There are degrees of invalidity depending upon the gravity of the infirmity, as to whether it is, fundamental or otherwise."

In view of the above observations, it must be held that even a void transaction must be so declared, may be even in collateral proceedings, before it can be ignored. The authroity or Court, while making such a declaration is, therefore, bound to consider the

aforesaid general principle that power must be exercised in a reasonable manner which inheres the concept of its exercise within a reasonable time subject to the exception referred to above.

13. There is one more aspect which is required to be referred to. As per the orders which were passed in 1951, a non-irrigated land less than 2 Acres in area would be a fragment but so as far as the irrigated land is concerned, it would a fragment only if it has an area of less than 20 Gunthas. In the instant case, the land in question admeasuring 1 Acre & 2 Gunthas is admittedly being irrigated since the year 1989-90. Of course, there is some controversy about the date from which the land came to be irrigated. Even if one were to proceed on the footing that the land came to be irrigated only from 1989-90, the fact remains that the land is since last about 9 years an irrigated land and, therefore, even according to the petitioner, sale of such land after 1989-90 would not have been void. This is an additional ground for this Court not to interfere with the order of the Tribunal in exercise of its discretionary jurisdiction under Articles 226 or 227 of the Constitution, when the object underlying the Act is not being frustrated now.

14. In light of the above discussion, it is not possible to accept the submittion of Mr Sanjanwala that a transaction falling foul of section 7 of the Fragmentation Act must be set aside at any point of time irrespective of any other consideration. The petition, therefore, deserves to dismissed.

15. The petition is accordingly dismissed. Notice is discharged.

16. Since the main petition is disposed of, Civil Application No. 4695 of 1998 does not survive and is disposed of accordingly.

Sd/-

June 30, 1998 (M.S. Shah, J.)